FILED

(1) 01023 DEC 18 2000

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No. 00-_____

IN THE

Supreme Court of the United States

RICH HALBMAN,

Petitioner,

v.

ST. LOUIS COUNTY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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69 pp

QUESTION PRESENTED

Petitioner is a resident of a small Missouri city that was disincorporated under Missouri law on the basis of a petition by a group of its citizens. Alleging that the disincorporation was effected without notice to petitioner and other city residents, petitioner filed this action in a federal district court under 42 U.S.C. § 1983, claiming violations of the federal Constitution. The district court dismissed the action, and the Eighth Circuit affirmed on the ground that the *Rooker-Feldman* doctrine deprived the federal courts of jurisdiction. The doctrine was invoked solely on the basis of an earlier state court action in which petitioner was not a party. The decision below presents the following question:

> Did the court below err in extending the *Rooker-Feldman* doctrine to bar this federal court action by a nonparty to an earlier state court action?

PARTIES TO THE PROCEEDING

The petitioner in this case is Rich Halbman.

The following parties appeared as appellants in the Eighth Circuit but do not appear as petitioners in this Court: Rich Lemonds, Vivian McCallum, Rich Mueller, Roger Niere, and Donald Thoele.

The respondents, all of whom appeared as appellees in the Eighth Circuit, are: St. Louis County, a county having a charter form of government; the City of Peerless Park, a municipal corporation; Dudley McCarter, trustee for the City of Peerless Park; and Donna Asberry, John Asberry, Lisa Chambers, Mary Corbett, Kevin Grady, Elisabeth Kreminski, Frank Kreminski, Mike McCole, Susan McCole, Greg Lasky, Joseph Otzenberger, Elaine Otzenberger, Thaddeus Otzenberger, Arthur Otzenberger, Rosemarie Otzenberger, Ritamarie Otzenberger, Melvin Sutherland, and Blanche Sutherland.

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PETITION FOR A WRIT OF CERTIORARI

Rich Halbman respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeal for the Eighth Circuit in this case.

OPINIONS BELOW

The Court of Appeals' decision denying rehearing (App. 36a) is unreported. Its decision on the merits (App. 1a-13a) is reported at 222 F.3d 488. The decision of the district court (App. 14a-23a) is unreported.

JURISDICTION

The petition for rehearing and suggestion for rehearing *en banc* was denied on September 18, 2000. App. 36a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions pertaining to the *Rooker-Feldman* doctrine are as follows. 28 U.S.C. § 1257 states in relevant part:

> **§ 1257. State courts; certiorari**
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States . . . .

28 U.S.C. § 1331 provides:

> **§ 1331. Federal question**
>
> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The Full Faith and Credit Act, 28 U.S.C. § 1738, provides in relevant part:

> **§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit**
>
> * * *
>
> The records and judicial proceedings of any court of any . . . State, Territory or Possession . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

This case began when a group of residents of a small Missouri city filed a petition with the county council to disincorporate the city. The county council granted the petition. A state court action was then filed in which the disincorporation was challenged on state law and federal due process grounds. That action resulted in a judgment for the defendants. Petitioner Halbman brought a federal court suit under 42 U.S.C. § 1983, challenging the disincorporation solely on federal grounds. The U.S. Court of Appeals for the Eighth Circuit, affirming the dismissal of the action by the district court, held that the *Rooker-Feldman* doctrine[1] barred the exercise of federal jurisdiction over Halbman's claims even though Halbman had not been a party in the state court and alleged no harm flowing from its judgment.

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[1] *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923) (holding that federal district court lacked jurisdiction to entertain a lawsuit that was brought by the loser of a state court action and that was "merely an attempt to get rid of the [state court] judgment for alleged errors of law committed in the exercise of that jurisdiction"); *District of Colombia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 482 (1983) (reaffirming that "a United States District Court has no authority to review final judgments of a state court in judicial proceedings") (citing *Rooker*, 263 U.S. at 415-16).

As the Eighth Circuit noted, its broad construction of the *Rooker-Feldman* doctrine to bind a nonparty to an earlier state court litigation conflicts with the law of other circuits that interpret the doctrine much more narrowly. Moreover, by applying the doctrine broadly to a case in which a federal plaintiff did not allege injury caused by the state court judgment itself, but rather by the underlying conduct of defendants that had been unsuccessfully challenged in the state court by others, the decision below embraced one side of an additional conflict between the circuits.

The *Rooker-Feldman* doctrine has been relied on by the lower federal courts with increasing frequency in recent years, with little guidance from this Court. This case presents an excellent vehicle for this Court to bring consistency and coherence to the *Rooker-Feldman* doctrine, an increasingly important aspect of federal law.

1. The Petition for "Disincorporation Without Election." In 1997, the City of Peerless Park, Missouri (located within St. Louis County, a few miles west of the City of St. Louis) was sized "fourth class" because it had fewer than 100 residents. App. 3a. Missouri law afforded the citizens of a fourth-class city two different ways to disincorporate their city. First, under R.S. Mo. § 79.490, a majority of the city's voters could ask the county to hold an election on the issue. Under this option, the citizens of the city would be given at least four weeks' notice of the election, and the affirmative vote of at least 60% of those voting would be required to trigger disincorporation.

Alternatively, R.S. Mo. § 79.495 permitted "disincorporation without election." It authorized a county to disincorporate a fourth-class city "upon petition of two-thirds of the voters of such city, without an election in such city, provided that the petition requests disincorporation without an election . . . ." Under Section 79.495, a properly executed petition would not merely put disincorporation on the agenda of the county government. Instead, the county government would be required

to disincorporate the city without an inquiry into the merits of the issue, without notice to other residents of the city, and without holding an election. App. 30a-31a.

On December 11, 1997, eighteen registered voters of Peerless Park filed a petition with the St. Louis County Council invoking the "disincorporation without election" process set out in Section 79.495. App. 3a, 15a. On January 22, 1998, the Council delegated the matter to a hearing officer. App. 16a. At the request of counsel for the petition signers, the hearing was focused on "a sterile mathematical calculation" of whether the petition was signed by two-thirds of the city residents who were registered to vote on the date the petition was filed. Tr. of Jan. 29, 1998, at 57; *see also id.* at 321-25. The hearing officer declined to consider any constitutional arguments on the basis that he lacked jurisdiction over such issues. Report of Hearing Officer dated March 3, 1998, at 7.

The hearing officer concluded that on the date the petition was filed, Peerless Park had 27 registered voters, and that all eighteen people who signed the petition were registered — so that the two-thirds threshold of Section 79.495 had been met, and therefore "the [County] Council must order Peerless Park to be disincorporated." *Id.* at 24-25. On March 19, 1998, the St. Louis County Council adopted the hearing officer's report in full and ordered the disincorporation of Peerless Park effective on May 1, 1998. App. 16a.

2. The City's State Court Action. The City of Peerless Park and two of its officials then filed a state-court action against the county and several county council members. App. 4a, 16a. Its principal claim was that under Missouri law "the disincorporation was a 'boundary change,' reviewable by the Boundary Commission, which would allow for an open public election." App. 16a; *see also* App. 4a, 34a-35a. "The complaint further alleged that the council's order was 'voidable' because [S]ection 79.495 violated the federal Due Process Clause by failing to provide for notice of an impending petition drive." App. 4a.

The eighteen Peerless Park residents who had signed the petition intervened in the state court action to defend the order of disincorporation. App. 16a. Neither these residents nor the defendants in the state court action sought to join Halbman or any of the other residents of Peerless Park in an effort to make the result of the state court action binding on all those who might be affected by disincorporation. The state trial court issued an order rejecting the arguments made against disincorporation, an order that was affirmed by the state appellate court. App. 4a, 16a, 24a-35a.

3. Halbman's Federal Court Action. Shortly before the state appellate court's affirmance in the state court action brought by the City of Peerless Park and its officials, a federal action was filed under 42 U.S.C. § 1983 in which petitioner Halbman joined as a plaintiff, alleging violations of the federal Constitution. App. 4a.[2] Halbman was not only a resident of Peerless Park but its Building Commissioner, a position that he would lose as a result of disincorporation. App. 12a. As defendants, Halbman named St. Louis County and the trustee for the City of Peerless Park. Halbman contended that R.S. Mo. § 79.495's provision for "disincorporation without election," as applied by the county to the Peerless Park petition filed by eighteen residents on December 11, 1997, violated his voting rights protected under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. App. 4a.

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[2] The federal court action in which Halbman joined was initially filed on April 30, 1999, by Rich Lemonds, another resident of Peerless Park who was not registered to vote on the date the petition was filed, but who registered the next day. App. 4a. Two weeks later, on May 13, 1999, the first amended complaint was filed listing Halbman as a plaintiff. Several months later, on August 24, 1999, the district court denied an effort by four other residents of Peerless Park to join the lawsuit as plaintiffs.

Halbman's claim was founded largely on two facts: (1) that on the day after the disincorporation petition was filed (as soon as he learned of it), he had registered to vote; and (2) that if his vote had been counted in the calculus, "the number of signatures on the petition would have been insufficient to effectuate disincorporation." App. 4a; *see also* Tr. of Jan. 29, 1998, at 222-23. On this basis, Halbman maintained that principles of federal law invalidate any refusal to count his vote, because his fellow residents are not permitted to use Section 79.495 to "vote" without prior notice on a matter that would otherwise require an election. To permit such use, he contended, would circumvent his right to register for and vote in an election, denying him the right to participate in the voting process on an equal basis with other citizens in the jurisdiction. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 561-62, 565 (1964) (protecting "full and effective participation in the political processes"); *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626-29 (1969) (equal protection is denied if "some resident citizens are permitted to participate and some are not"); *Hussey v. City of Portland*, 64 F.3d 1260, 1263-65 (9th Cir. 1995), *cert. denied*, 516 U.S. 1112 (1996) (holding that the use of a petition process as an alternative to an election constitutes "voting" that is governed by the same standards applicable to elections generally).

4. The Rulings of the District Court and Eighth Circuit. The eighteen signers of the petition intervened in Halbman's federal court action to defend the disincorporation, just as they had in reaction to the earlier state court action. They and the defendants then moved to dismiss the action on various grounds, including the argument that the *Rooker-Feldman* doctrine deprived the federal district court of jurisdiction to hear the case, given the earlier state court litigation on the disincorporation issue. The district court ruled for the defendants on the merits, App. 17a-21a, but also indicated that it agreed with the *Rooker-Feldman* argument. App. 22a n.1.

The Court of Appeals, declining to reach the merits of Halbman's claims, affirmed solely on the basis of the *Rooker-Feldman* doctrine. App. 5a-13a. It construed that doctrine as barring "not only straightforward appeals" from state court judgments brought in federal courts, "but also more indirect attempts by federal plaintiffs to undermine state court decisions" — that is, efforts by federal plaintiffs to raise "general constitutional claims that are 'inextricably intertwined' with specific claims already adjudicated in state court." App. 5a-6a.[3]

A key "complicating factor" in this analysis, the Court of Appeals candidly noted, lay in the fact that Halbman was not "a party to the state court action" and, further, that "the state court plaintiffs who raised the due process challenge would not have had standing to raise the first amendment and equal protection [claims raised by Halbman] because the state court plaintiffs, unlike [Halbman], were registered voters." App. 9a. On this point, the Court of Appeals observed that several circuits "have held that the *Rooker-Feldman* doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding state court action." App. 9a. But it found itself persuaded by the approach that had been taken in other federal court opinions that it is proper "to apply *Rooker-Feldman* against parties who did not participate in the state suit." App. 10a. Thus, the Court of Appeals held that the fact "that appellants

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[3] According to the Court of Appeals, a federal court claim is "inextricably intertwined with a state court judgment 'if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it.'" App. 6a (quoting *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring)). The Court of Appeals found this "inextricably intertwined" test met in this case on the basis that the Missouri state court action had rejected attacks on the county's order of disincorporation, and that Halbman's federal court action called into question the county's order of disincorporation. App. 6a-9a. *See, e.g.*, App. 7a (noting that "the relief sought" by Halbman "— to enjoin the disincorporation of Peerless Park — would, as a practical matter, directly nullify the final judgment of the state district court upholding disincorporation.").

were not parties to the state suit is not by itself dispositive." App. 10a-11a.

Under its view of the *Rooker-Feldman* doctrine, the Eighth Circuit ruled against Halbman on the ground that "there can be little doubt" that Halbman "had ample opportunity to bring [his] first amendment and equal protection claims in state court." App. 12a. Although he was "well aware" of the state court action, he did not file his federal court action until after the state court plaintiffs had failed on their arguments against disincorporation. App. 12a-13a. "This the *Rooker-Feldman* doctrine does not allow," the court held. App. 13a (citing *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 558 (7th Cir. 1999)).

On September 18, 2000, the court denied Halbman's petition for rehearing and suggestion for rehearing *en banc*. App. 36a.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT IN THE CIRCUITS OVER WHETHER THE *ROOKER-FELDMAN* DOCTRINE APPLIES TO A NONPARTY TO AN EARLIER STATE COURT ACTION

As the Eighth Circuit observed in its decision below, the lower federal courts are in conflict over the threshold issue of whether the *Rooker-Feldman* doctrine may be applied to preclude a plaintiff from suing in federal court on the basis of an earlier state court action in which the plaintiff was not a party. App. 9a-10a. This issue has recently drawn substantial scholarly attention as an important one worthy of this Court's plenary review and definitive resolution. *See generally Symposium: The* Rooker-Feldman *Doctrine*, 74 Notre Dame L. Rev. 1081-1233 (1999). *See, e.g.*, Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, *id.* at 1985, 1112-23 (collecting and defending lower court rulings applying the *Rooker-Feldman* doctrine to nonparties) (relied on by the court below, *see* App. 10a); Barry Friedman and James E.

Gaylord, Rooker-Feldman, *From the Ground Up*, *id.* at 1129, 1141-47 (addressing the due process implications of these rulings); Susan Bandes, *The* Rooker-Feldman *Doctrine: Evaluating Its Jurisdictional Status*, *id.* at 1175, 1194-95 (describing the "rather frightening position" that the *Rooker-Feldman* doctrine may be invoked against a federal plaintiff based on an earlier state court action "brought by different parties in an entirely different case"); Jack M. Beermann, *Comments on* Rooker-Feldman *or Let State Law Be Our Guide*, *id.* at 1209, 1221-22 (noting that the application of the *Rooker-Feldman* doctrine to nonparties involves "radical" changes, such as the creation of "a complicated set of rules requiring nonparties to intervene in numerous situations to preserve their rights," thereby effectively imposing federal court supervision of "the mandatory party practice of the state courts").

Review of the decision below, and resolution of the conflict in the circuits, is particularly warranted for three reasons. First, the *Rooker-Feldman* doctrine has "experienced explosive growth in the lower courts" in the past 15 years, during which it has been addressed only in passing by this Court, producing a need for clarification. Sherry, *supra*, 74 Notre Dame L. Rev. at 1087-88 & n.16. *See also* Bandes, *id.* at 1188 n.64 ("given the lack of Supreme Court guidance on the subject, we currently have multiple federal court decisions with no uniformity"); Thomas D. Rowe, Jr., Rooker-Feldman: *Worth Only the Powder to Blow It Up?*, *id.* at 1081, 1084 (noting apparent scholarly consensus that "the proliferation of lower court case law with many different emphases and some highly questionable decisions suggests" a need for Supreme Court review of the *Rooker-Feldman* doctrine); Richard H. Fallon, Daniel J. Meltzer & David L. Shapiro, *Hart & Wechsler's The Federal Courts and the Federal System* 216 (4th ed. 2000 Supp.) ("The lower courts have had difficulty interpreting and applying the Rooker-Feldman doctrine, and to date, the Supreme Court has done virtually nothing to give them guidance.").

Second, the approach of the Eighth Circuit, in permitting the invocation of the doctrine against nonparties, is unsupported by any statutory text or discernible federal interest, or any need to vindicate a state interest or concern. *See* Beermann, *supra*, 74 Notre Dame L. Rev. at 1218-19, 1221-23, 1228-29.

Third, the use of the doctrine to preclude a federal court action by a nonparty to the prior state court proceeding raises grave questions concerning a nonparty's right to a day in court under the due process clause of the Fourteenth Amendment. *See, e.g., Martin v. Wilks*, 490 U.S. 755, 759-65 (1989). *See also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999); *South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160, 167-68 (1999); *Baker v. General Motors Corp.*, 522 U.S. 222, 237 n.11 (1998); *Richards v. Jefferson County*, 517 U.S. 793, 797-802 (1996); Friedman & Gaylord, *supra*, 74 Notre Dame L. Rev. at 1141-43.

A. The Majority View

The majority view is that the *Rooker-Feldman* doctrine may not be applied to block suit by a federal court plaintiff who was not a party to the earlier state court litigation. *See* 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4469.1, at 630 (2000 Supp.) (noting "rule that Rooker-Feldman doctrine does not defeat federal jurisdiction when a nonparty brings the action, even though decision may involve matters inextricably intertwined with a state judgment"). At least six circuits — the Third, Fourth, Sixth, Ninth, Tenth, and Eleventh Circuits — take this approach.

Third Circuit. The Third Circuit has long refused to apply the *Rooker-Feldman* doctrine to bar suit by a federal court plaintiff that was not a party to the earlier state court action. In *Valenti v. Mitchell*, 962 F.2d 288 (3d Cir. 1992), that circuit addressed a federal court ballot access lawsuit filed under 42 U.S.C. § 1983 in the aftermath of related state court litigation. The court rejected the argument that the claims of all of the

plaintiffs should be dismissed based on the *Rooker-Feldman* doctrine. *Id.* at 294-95. With respect to the plaintiffs who had not appeared as parties in the earlier state court litigation, the Third Circuit held that "[a] non-party is not precluded from relitigating matters decided in a prior action simply because it passed by an opportunity to intervene." *Id.* at 297 (citations omitted). The court could find "no authority which would extend the *Rooker-Feldman* doctrine to persons not parties to the proceedings before the state supreme court." *Id.*

In *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834 (3d Cir. 1996), the Third Circuit reiterated its view "that '*Rooker-Feldman* does not bar individual constitutional claims by persons not parties to earlier state court litigation.'" *Id.* at 840 (quoting *Valenti*, 962 F.2d at 298). *See also Marks v. Stinson*, 19 F.3d 873, 886 n.11 (3d Cir. 1994) (holding that Latino absentee voters were not barred from suit under *Rooker-Feldman* "because they were not parties to any of the state court proceedings on the matter"); *E.B. v. Verniero*, 119 F.3d 1077, 1092 (3d Cir. 1997) (reiterating that "'*Rooker-Feldman* does not bar individual constitutional claims by persons not parties to earlier state court litigation'") (quoting *Valenti*, 962 F.2d at 298).

Fourth Circuit. In *Gross v. Weingarten*, 217 F.3d 208, 218 n.6 (4th Cir. 2000), the Fourth Circuit rejected the district court's reliance on the *Rooker-Feldman* doctrine to bar federal court litigants from introducing certain evidence inconsistent with a state court order in a proceeding in which they had not been parties. The Fourth Circuit read this Court's decision in *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994), as holding that the *Rooker-Feldman* doctrine "does not apply . . . when the person asserting the claim in the federal suit was not a party to the state proceeding." *Id.*[4]

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[4] *Johnson v. De Grandy* involved a federal court voting rights lawsuit filed by the federal government claiming that Florida's reapportionment plan for its legislature unlawfully diluted the voting strength of minorities in the Dade County area. Pointing to an earlier lawsuit in the Florida Supreme Court

Sixth Circuit. In *United States v. Owens*, 54 F.3d 271 (6th Cir.), *cert. dismissed*, 516 U.S. 983 (1995), the Sixth Circuit agreed with the Third Circuit's conclusion that "[t]he *Rooker-Feldman* doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding action in state court." *Id.* at 274 (citing *Valenti*). It explained its reasoning as follows:

> A person who was not a party in the state court action did not have an opportunity to litigate its claims. That person must be allowed to bring an action in federal court to attempt to vindicate its perceived rights, otherwise it will have no chance to do so. A party has no obligation to attempt to intervene in a state court action when it is not named in the suit in order to preserve its rights.

Id. See also Gottfried v. Medical Planning Services, Inc., 142 F.3d 326, 330 (6th Cir.), *cert. denied*, 525 U.S. 1041 (1998) (reaffirming *Owens* holding).

Ninth Circuit. In *Bennett v. Yoshina*, 140 F.3d 1218 (9th Cir. 1998), *cert. denied*, 525 U.S. 1103 (1999), the Ninth Circuit upheld the district court's decision in a federal voting rights case that relied on *Johnson v. De Grandy* to hold that the *Rooker-*

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in which the United States could have intervened, Florida argued that the lawsuit should be dismissed under the *Rooker-Feldman* doctrine, "under which a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court . . . ." 512 U.S. at 1005-06. On this issue, this Court held that the doctrine was "inapt" because, unlike in *Rooker* or *Feldman*, "the United States was not a party in the state court" and "was in no position to ask this Court to review the state court's judgment." Instead, this Court concluded, "[t]he United States merely seeks to litigate its § 2 case for the first time." *Id.* at 1006. A number of lower federal courts have declined to follow the *Johnson v. De Grandy* analysis, evidently viewing it as too "brief, equivocal, and conclusory" to constitute "binding precedent." Sherry, *supra*, 74 Notre Dame L. Rev. at 1112 n.108.

Feldman doctrine was "not implicated in this case because it applies only when the federal plaintiff was a party to the state suit." *Id.* at 1223-24 (citing *Johnson*, 512 U.S. at 1006). The court refused to preclude even the two federal court plaintiffs that had participated as *amici curiae* in the state court proceedings, given that *amici* "are not actually parties to a case, cannot conduct discovery, and do not have the right to appeal an adverse decision." *Id.* at 1124.

Tenth Circuit. In *Johnson v. Rodrigues*, 226 F.3d 1103 (10th Cir. 2000), the Tenth Circuit reversed the district court's dismissal of a lawsuit brought by a father against an adoption agency and adoptive parents, following a state court adoption proceeding to which the father had not been made a party. The Tenth Circuit based its decision on its reading of *Johnson v. De Grandy* as holding that "the *Rooker-Feldman* doctrine should not be applied against non-parties." *Id.* at 1009-10 (citing cases).

Eleventh Circuit. In *Roe v. Alabama*, 43 F.3d 574 (11th Cir. 1995), a federal voting rights case, the Eleventh Circuit affirmed the district court's decision that the *Rooker-Feldman* doctrine was inapplicable. Citing this Court's decision in *Johnson v. De Grandy*, the court held that because the federal court plaintiffs were not parties to the earlier state court action, "[t]he *Rooker-Feldman* doctrine does not apply." *Id.* at 580.

B. The Minority View

As noted in the decision of the Court of Appeals below, App. 10a, some federal courts and judges have taken the contrary view: that the *Rooker-Feldman* doctrine *can* be applied to bar the suit of a federal court plaintiff who was not a party to the earlier state court litigation. *See also* Sherry, *supra*, 74 Notre Dame L. Rev. at 1112-13. We briefly summarize these cases.

Seventh Circuit. According to the court below, the Seventh Circuit has "not hesitated to apply *Rooker-Feldman* against parties who did not participate in the state suit." App. 10a. The

Seventh Circuit decision cited in support of this statement is *T.W. by Enk v. Brophy*, 124 F.3d 893 (7th Cir. 1997), a decision that appears to rely on the *Rooker-Feldman* doctrine to preclude a federal court action by a nonparty to the earlier state court action. *Id.* at 896, 898 (barring suit by an individual, not a party to a state court child custody action, who sought to appear in federal court as the guardian ad litem for the children involved).[5]

Eighth Circuit. In this case, the Eighth Circuit clearly embraced the minority view that the *Rooker-Feldman* doctrine may be applied against nonparties to the state court action. App. 10a. In so doing, the Eighth Circuit explicitly rejected its earlier dictum that under this Court's decision in *Johnson v. De Grandy*, "the *Rooker-Feldman* rule does not bar a federal claim brought by one who was not a party to the state court action and therefore not in any position to seek appellate review of the state court judgment." *Snider v. City of Excelsior Springs*, 154 F.3d 809, 812 (8th Cir. 1998) (citing *Johnson*, 512 U.S. at 1005-06). That statement was not determinative of the outcome in *Snider* because of the Eighth Circuit's conclusion that the federal court

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[5] *See also* Sherry, *supra*, 74 Notre Dame L. Rev. at 1119. Prior decisions of the Seventh Circuit appeared to follow the majority view. *See, e.g., Hoover v. Wagner*, 47 F.3d 845, 849 (7th Cir. 1995) (in rejecting a *Rooker-Feldman* argument against the federal court plaintiffs' attack on a state court injunction that impaired their anti-abortion protest activities, the court observed that "the plaintiffs are not parties to the state court action, so it is a little hard to describe what they are doing as circumventing the prescribed mode of appellate review. *Their* rights have not been adjudicated; and ordinarily that would bar the defendants' invocation of *Rooker-Feldman*.") (citing *Valenti*, 962 F.2d at 297-98); *Allen v. Allen*, 48 F.3d 259, 261 (7th Cir. 1995) (noting that the *Rooker-Feldman* doctrine leaves "non-parties free to pursue their claims" in federal court); *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 597-98 (7th Cir. 1992), *cert. denied*, 508 U.S. 941 (1993) (holding that "because Haynes was not a party" to the earlier state court proceedings, "the district court was not deprived of jurisdiction to proceed on Haynes's federal claims under the *Rooker-Feldman* doctrine"). *Cf.* Sherry, *supra*, 74 Notre Dame L. Rev. at 1118-19 (analyzing *Leaf* and *Allen* decisions).

plaintiffs in that case *had* been parties to the state court lawsuit (as members of a duly certified class). *Id.* In the decision below — in which the court noted that Halbman was not "a party to the state court action," App. 4a — the Eighth Circuit, in rejecting its prior dictum in *Snider*, held instead that this Court's statement in *Johnson* that *Rooker-Feldman* applies only to parties to the state court action was itself dictum. App. 11a n.6. The Eighth Circuit recently reaffirmed this aspect of the decision below. *Brown v. Sweeney*, 2000 U.S. App. LEXIS 31325, *1-2 (8th Cir. Dec. 8, 2000) (citing *Lemonds v. St. Louis County*, 222 F.3d 488, 492-95 (8th Cir. 2000)) ("*Rooker-Feldman* doctrine . . . applies even where party to federal action was not party to state action").

Circuit Court Individual Opinions and District Court Decisions. Also articulating the minority rule concerning the application of the *Rooker-Feldman* doctrine to nonparties are two individual opinions by Ninth Circuit and Eleventh Circuit judges. A concurrence in *Bates v. Jones*, 131 F.3d 843, 855-57 (9th Cir. 1997) (en banc) (Rymer, J., joined by O'Scannlain, J., concurring), *cert. denied*, 523 U.S. 1021 (1998), objected to the district court having reached the merits of a challenge to California's term limits for state officials, after the California Supreme Court had already rendered a decision on the matter in a case that was brought by entirely different parties. Arguing that the *Rooker-Feldman* doctrine should bar the lawsuit, Judge Rymer noted that the federal court action had been brought by "different legislators, and different constituents," but observed: "I fail to see what difference that makes." *Id.* at 857. *Cf.* Bandes, *supra*, 74 Notre Dame L. Rev. at 1194-95, 1199 (describing *Bates* concurrence as advancing a "rather frightening position" that "would have devastating consequences for litigant access to federal court"). Similarly, the dissent in *Roe v. Alabama*, 43 F.3d 574, 586 (11th Cir. 1995) (Edmondson, J., dissenting), a federal voting rights case, questioned what it saw as the majority's view "that only absolute identity of parties in the state court action and federal court action (without regard to state-case parties possibly under the control of or in privity with

federal-case parties) will trigger a *Rooker-Feldman* bar in federal court."

Finally, as noted in the decision below, App. 10a, and by a leading commentator cited in the decision, *see* Sherry, *supra*, 74 Notre Dame L. Rev. at 1113, federal district judges located in the Fourth and Eleventh Circuits have issued decisions that applied the *Rooker-Feldman* doctrine to nonparties to the earlier state court litigation, in reasoning that was not addressed on appeal. *See Republic of Paraguay v. Allen*, 949 F. Supp. 1269, 1273 (E. D. Va. 1996), *aff'd on other grounds*, 134 F.3d 622, 626-27 & n.4 (4th Cir. 1998); *Williams v. Adkinson*, 792 F. Supp. 755, 761-63 (M. D. Ala. 1992), *aff'd without opinion*, 987 F.2d 774 (11th Cir. 1993).

II. CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT IN THE CIRCUITS OVER WHETHER THE *ROOKER-FELDMAN* DOCTRINE APPLIES WHERE THE FEDERAL COURT PLAINTIFF DOES NOT ALLEGE INJURY CAUSED BY THE STATE COURT JUDGMENT

Although the Eighth Circuit only briefly addressed the point in its decision, App. 5a-9a, there is also a longstanding disagreement among the circuits, and general confusion, over what overlap between a federal court action and an earlier state court action is enough to trigger the use of the *Rooker-Feldman* doctrine. Even if this Court were to resolve the conflict discussed in Part I by deciding that there are instances, potentially embracing this case, in which the *Rooker-Feldman* doctrine may be applied to a nonparty to a state court proceeding, this further disagreement provides an additional reason for granting certiorari in order to bring consistency and coherence to another aspect of the doctrine.

As *Rooker* itself made clear, assuming that other conditions for the application of this doctrine are met, the doctrine is triggered if the federal court plaintiff explicitly asks that the state court judgment be voided. *Rooker v. Fidelity Trust Co.*, 263

U.S. 413, 414-16 (1923). The question is whether and to what extent action short of such a request will trigger the *Rooker-Feldman* doctrine. Some circuits narrowly confine the circumstances that will trigger the doctrine, and others (including the Eighth Circuit) broadly interpret its scope.

A. The Narrow Construction of *Rooker-Feldman*

The view taken by leading commentators and several circuits is that the *Rooker-Feldman* doctrine should be narrowly construed to "reduce the occasions that require a federal court to give greater effect to a state judgment than would be recognized in state courts." 18 Wright, Miller & Cooper, *supra*, § 4469.1, at 633 (2000 Supp.) (citation omitted). These authorities would permit use of the doctrine to block only those federal court "claims that seek to 'undo a remedial order of some sort,'" effectively limiting the doctrine "to actions that seek an order directed to a state court." *Id.* at 633-34, 662 & n.80 (quoting *Nesses v. Shepard*, 68 F.3d 1003, 1004 (7th Cir. 1995) (Posner, C.J.)).

The Seventh Circuit has followed this narrow, bright-line test for triggering the *Rooker-Feldman* doctrine in numerous cases during the past decade. In *GASH Associates v. Village of Rosemont*, 995 F.2d 726 (7th Cir. 1993) (Easterbrook, J.), the court held that the distinction between preclusion and the *Rooker-Feldman* doctrine means that the doctrine is *not* triggered simply because the federal court plaintiff presents a claim that was earlier rejected by a state court:

> The *Rooker-Feldman* doctrine asks: is the federal court plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.

Id. at 728.

On the facts of the *GASH Associates* case, in which a building owner was attacking the result of a state court foreclosure action, the Seventh Circuit found the *Rooker-Feldman* doctrine applicable on the basis that the plaintiff

> has no claim independent of the state court's adverse decision. To put this differently, the injury of which GASH complains was caused by the judgment, just as in *Rooker* [and] *Feldman* . . . . GASH did not suffer an injury out of court and then fail to get relief from state court; its injury came from the judgment confirming the sale . . . .

Id. at 729. This view — that the *Rooker-Feldman* doctrine is only triggered if the federal court plaintiff claims injury caused by the state court judgment itself — has been reiterated by the Seventh Circuit on numerous occasions.[6]

Five other circuits (the Second, Third, Fourth, Eleventh, and D.C. Circuits) have to varying degrees followed the Seventh Circuit in articulating a narrow scope for the *Rooker-Feldman* doctrine, one that focuses on whether the federal court plaintiff is alleging an injury caused by the state court judgment.

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[6] *See, e.g., Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702-03 (7th Cir. 1998) ("a federal claim alleging injury caused by a state court judgment must be distinguished from a federal claim alleging a prior injury that a state court failed to remedy," and here the plaintiff "does not allege an injury from the state court judgment itself; rather, it challenges the actions of the defendants."). *See also 4901 Corporation v. Town of Cicero*, 220 F.3d 522, 527-28 (7th Cir. 2000); *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 997 (7th Cir. 2000); *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 555-56 (7th Cir. 1999); *Van Harken v. City of Chicago*, 103 F.3d 1346, 1349 (7th Cir.), *cert. denied*, 520 U.S. 1241 (1997); *Kamilewicz v. Bank of Boston Corp.*, 92 F.3d 506, 510 (7th Cir. 1996), *rehearing en banc denied*, 100 F.3d 1348, *cert. denied*, 520 U.S. 1204 (1997); *Young v. Murphy*, 90 F.3d 1225, 1230-31 (7th Cir. 1996); *Garry v. Geils*, 82 F.3d 1362, 1365-68 (7th Cir. 1996); *Homola v. McNamara*, 59 F.3d 647, 650 (7th Cir. 1995).

The circuit that has been most explicit in agreeing with the Seventh Circuit on this score is the Third Circuit. In *Parkview Associates Partnership. v. City of Lebanon*, 225 F.3d 321, 326 (3d Cir. 2000), the Third Circuit noted "the overwhelming precedent in this court construing the *Rooker-Feldman* doctrine narrowly" in its decision reversing a district court's reliance on that doctrine. In that case, a nursing home seeking to expand had been denied the necessary zoning variance, after which it had appealed that result to state court on the record before the zoning board, and lost. It then filed a federal court action alleging violations of anti-discrimination statutes. Adopting the approach of the Seventh Circuit, the Third Circuit found no *Rooker-Feldman* bar to the nursing home's federal court action, which challenged the underlying zoning board decision and not the ruling of the state court. *Id.* at 328-29 (citing *GASH Associates*, 995 F.2d at 728).

The Fourth, Eleventh and D.C. Circuits have also favorably (although more briefly) cited Seventh Circuit precedent in emphasizing that the *Rooker-Feldman* doctrine targets those plaintiffs who are attacking a state court judgment. *See Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 202 (4th Cir. 2000) (quoting *GASH Associates*, 995 F.2d at 727); *Allstate Ins. Co. v. West Virginia State Bar*, 2000 U.S. App. LEXIS 30143, at *22 (4th Cir. Nov. 30, 2000) (same); *Narey v. Dean*, 32 F.3d 1521, 1524-25 (11th Cir. 1994) (citing *GASH Associates*, 995 F.2d at 728); *Stanton v. District of Columbia Court of Appeals*, 127 F.3d 72, 75 (D.C. Cir. 1997) (same). The Second Circuit has cited Seventh Circuit precedent in refusing to "extend or amplify the *Rooker-Feldman* doctrine," observing that "[w]hether the *Rooker-Feldman* doctrine is coextensive with preclusion or extends beyond preclusionary rules is a question that has perplexed courts and commentators." *Hachamovitch v. DeBuono*, 159 F.3d 687, 696 (2d Cir. 1998) (citing *Garry v. Geils*, 82 F.3d 1362, 1367-68 (7th Cir. 1996)).

B. The Broad Construction of *Rooker-Feldman*

Several circuits, however, have construed the *Rooker-Feldman* doctrine much more broadly. These circuits permit it to be used, as the Eighth Circuit did in this case, see p. 7 & note 3, *supra*, to bar a plaintiff from proceeding in federal court even where the plaintiff alleges no injury caused by the state court judgment, but simply alleges an injury caused by the defendants that a state court merely has failed to remedy.[7] The basic theory behind these decisions, one never articulated by a majority of this Court, is that the *Rooker-Feldman* doctrine should bar suit whenever "the federal court cannot rule for the plaintiff without holding the state court judgment erroneous." Sherry, *supra*, 74 Notre Dame L. Rev. at 1094-95 & n.41 (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring), and citing lower court applications of this theory).[8]

This approach to the *Rooker-Feldman* doctrine involves a "transmutation of res judicata doctrine into jurisdictional dogma," 18 Wright, Miller & Cooper, *supra*, § 4469.1, at 633 (2000 Supp.), in tension with the functioning of 28 U.S.C. § 1738, "which requires the federal court to give the judgment the *same* effect as the rendering state would." *GASH Associates*,

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[7] *See, e.g., Sheehan v. Marr*, 207 F.3d 35, 39-40 (1st Cir. 2000); *Hill v. Town of Conway*, 193 F.3d 33, 39-40 (1st Cir. 1999); *Moccio v. New York State Office of Court Admin.*, 95 F.3d 195, 199-200 (2d Cir. 1996); *Catz v. Chalker*, 142 F.3d 279, 293-95 (6th Cir. 1998); *Meyer v. California Dep't of Rehabilitation*, 1999 U.S. App. LEXIS 7278, at *2 (9th Cir. Apr. 12, 1999); *Harpin v. Oakley Custom Homes*, 2000 U.S. App. LEXIS 25936, at *7-8 (10th Cir. Oct. 17, 2000).

[8] The opinion for the Court in *Pennzoil* did not mention the *Rooker-Feldman* doctrine. The five justices who did discuss the doctrine articulated varying views of its applicability and meaning, and no Justice joined in Justice Marshall's proposed construction of the doctrine. 481 U.S. at 18 (Scalia, J., joined by O'Connnor, J., concurring); *id.* at 21 (Brennan, J., joined by Marshall, J., concurring in the judgment); *id.* at 28 (Blackmun, J., concurring in the judgment).

995 F.2d at 728 (emphasis added). *See also* Bandes, *supra*, 74 Notre Dame L. Rev. at 1201 (noting the absence of any clear rationale or direction in Justice Marshall's proposed test); Beermann, *supra*, 74 Notre Dame L. Rev. at 1211-12 (noting that this construction of *Rooker-Feldman* circumvents this Court's rulings that state court judgments may not receive "greater preclusive effect in federal court than they would receive in state court.").

The Eighth Circuit's embrace of this theory to dispose of Halbman's lawsuit is clear from its past decisions and its decision below. In *In re Goetzman*, 91 F.3d 1173, 1177-78 (8th Cir.), *cert. denied*, 519 U.S. 1042 (1996), the court upheld a district court's reliance on the *Rooker-Feldman* doctrine to dismiss a lawsuit that merely sought a result different from the result of an earlier state court lawsuit. *See also Bechtold v. City of Rosemount*, 104 F.3d 1062, 1065-66 (8th Cir. 1997). And in *Snider v. City of Excelsior Springs*, 154 F.3d 809, 811 (8th Cir. 1998), the Eighth Circuit explicitly held that the *Rooker-Feldman* doctrine is triggered if a determination by the federal court in the plaintiff's favor would amount to a finding "that [the state court] decision was wrong."

In the decision below, in applying its broad construction of the *Rooker-Feldman* test to dismiss Halbman's case, the Eighth Circuit cited both its earlier decision in *Snider* and Justice Marshall's *Pennzoil* concurrence articulating this theory. App. 6a. Under this view, the court stated, the *Rooker-Feldman* doctrine may be used to foreclose "indirect attempts by federal plaintiffs to undermine state court decisions." App. 5a. Applying this broad test, the court noted that the earlier state court litigation brought by the City of Peerless Park and two of its officials challenged the disincorporation petition on constitutional grounds, but "the state court declined to reverse the council's disincorporation order." App. 6a-7a. This, the court held, was enough to bar Halbman's lawsuit under the *Rooker-Feldman* doctrine either: (1) on the theory that a federal court decision granting Halbman relief would somehow "nullify"

the state court's order refusing others relief, App. 7a, or (2) on the theory that Halbman's federal claims "closely implicate the decision of the state court," even though "technically the suits invoke distinct constitutional provisions." App. 7a-8a. The Eighth Circuit recently reaffirmed this aspect of the decision below. *Brown v. Sweeney*, 2000 U.S. App. LEXIS 31325, *1-2 (8th Cir. Dec. 8, 2000) (citing *Lemonds v. St. Louis County*, 222 F.3d 488, 492-95 (8th Cir. 2000)) (*Rooker-Feldman* doctrine applies "if federal claim succeeds only to extent state court wrongly decided issue before it").

Under the narrow approach to the *Rooker-Feldman* doctrine embraced by the Seventh Circuit and several other circuits, Halbman's lawsuit could not be dismissed because that lawsuit does not claim that the state court judgment caused Halbman injury. Rather, his lawsuit simply ignores that judgment, which was entered against others who elected to sue in state court, and seeks only relief against defendants for their allegedly unconstitutional actions. But under the broader, and unwarranted, interpretation of the doctrine adopted by the court below, Halbman's lawsuit was dismissed.

Thus, if this Court determines (in disagreement with our position in this case) that Halbman's status as a nonparty to the state court proceeding is not in itself a bar to the application of the *Rooker-Feldman* doctrine, this case then presents an excellent opportunity to resolve an equally important matter concerning the basic scope and function of the doctrine.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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December 18, 2000

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APPENDIX A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-3007

Rich Lemonds; Rich Halbman, Plaintiffs/Appellants, v. St. Louis County, a county having a charter form of government; City of Peerless Park, a municipal corporation; Dudley McCarter, trustee for the City of Peerless Park; Blanche Sutherland, Defendants/Appellees, Donna Asberry; John Asberry; Lisa Chambers; Mary Corbett; Kevin Grady; Elisabeth Kreminski; Frank Kreminski; Mike McCole; Susan McCole; Greg Lasky; Joseph Otzenberger; Elaine Otzenberger; Thaddeus Otzenberger; Arthur Otzenberger; Rosemarie Otzenberger; Ritamarie Otzenberger; Melvin Sutherland, Intervenor Defendants/Appellees.	*	Appeal from the United States District Court for the Eastern District of Missouri

No. 99-3930

Rich Lemonds; Rich Halbman, Plaintiffs/Appellants, v. St. Louis County, a county having a charter form of government; City of Peerless Park, a municipal corporation; Dudley McCarter, trustee for the City of Peerless Park; Defendants/Appellees, Donna Asberry; John Asberry; Lisa Chambers; Mary Corbett; Kevin Grady; Elisabeth Kreminski; Frank Kreminski; Mike McCole; Susan McCole; Greg Lasky; Joseph Otzenberger; Elaine Otzenberger; Thaddeus Otzenberger; Arthur Otzenberger; Rosemarie Otzenberger; Ritamarie Otzenberger; Melvin Sutherland; Blanche Sutherland, Intervenor Defendants/Appellees.	Appeal from the United States District Court for the Eastern District of Missouri

Submitted: April 12, 2000
Filed: August 3, 2000

[Page numbering from 222 F.3d 488 indicated in bold]

[491] Before WOLLMAN, Chief Judge, MAGILL, Circuit Judge, and FRANK,[1] District Judge.

WOLLMAN, Chief Judge.

Rich Lemonds and Rich Halbman (appellants) appeal from the district court's[2] denial of their requests for a preliminary injunction and for leave to file a third amended complaint. Appellants also appeal from the dismissal with prejudice of their 42 U.S.C. § 1983 claims. We affirm.

I.

On December 11, 1997, eighteen registered voters living in Peerless Park, Missouri, filed a petition with the St. Louis County Council (the council) requesting that their small city be disincorporated.[3] The council, having determined that a total of twenty-seven registered voters resided in Peerless Park, concluded that the petition met the requirements of Missouri Statutes section 79.495, which calls for the disincorporation of a "fourth class city" having a population of less than one hundred people upon petition by two thirds of that city's voters. Accordingly, the council ordered the requested disincorporation and appointed a trustee to represent the former city.

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[1] The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota, sitting by designation.

[2] The Honorable E. Richard Webber, United States District Judge for the Eastern District of Missouri.

[3] Peerless Park consisted of ten households, all within one block of each other. Although the petition appears to have been the culmination of a long-standing neighborhood power struggle, the details of this hard-fought battle are not relevant to this appeal. Thus, although we deny appellees' motion to strike the statement of facts from appellants' brief, we note that the disputed facts played no part in our decision.

Shortly after this order was issued, the former city and two of its former officials challenged the disincorporation in the Missouri Circuit Court for St. Louis County (the state court). The complaint, which named St. Louis County and several members [492] of the council as defendants, sought to reverse the disincorporation primarily on the grounds that the petition was actually a request for a "boundary change," and that, as such, it was reviewable by the state Boundary Commission and required an open public election under Missouri law. The complaint further alleged that the council's order was "voidable" because section 79.495 violated the federal Due Process Clause by failing to provide for notice of an impending petition drive. The state court rejected the boundary change argument, upheld the constitutionality of the statute, and found that the statute's requirements had been met. The court entered judgment against the former city and its former officials. This decision was affirmed by the Missouri Court of Appeals. Neither appellant was a party to the state court action.

One week prior to the state appellate court affirmance, appellants — residents of Peerless Park who were not registered to vote when the petition was circulated — filed this section 1983 action in federal district court against the County, the city of Peerless Park, and the city's trustee. The federal complaint alleged that the statutory scheme permitting disincorporation without an election violates both the First Amendment and the Equal Protection Clause. The complaint asserted that both appellants were "qualified" voters and that, had they been notified that the petition was being circulated, they would have registered so that they would be counted toward the total number of voters residing in the city. As it was, both appellants registered to vote on December 12, 1997, the day after the petition was filed with the council; it is undisputed that, had either of them done so previously, the number of signatures on the petition would have been insufficient to effectuate disincorporation. Appellants sought a preliminary

injunction, declaratory judgment, and permanent injunctive relief voiding the disincorporation of Peerless Park.

The district court denied the request for a preliminary injunction on June 19, 1999, and dismissed all claims with prejudice on October 15, 1999. The court found that the complaint failed to state a claim upon which relief could be granted, that appellants lacked standing to raise their claims in any event, and that the suit was barred by res judicata principles and the *Rooker-Feldman* doctrine. Timely appeals were taken from both decisions, as well as from the court's August 24, 1999, denial of leave to file a third amended complaint adding four new plaintiffs. These appeals have been consolidated.

II.

The *Rooker-Feldman* doctrine recognizes that, with the exception of habeas corpus petitions, lower federal courts lack subject matter jurisdiction over challenges to state court judgments. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476; *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). Instead, federal jurisdiction to review most state court judgments is vested exclusively in the United States Supreme Court. See 28 U.S.C. § 1257; *Feldman*, 460 U.S. at 486. Because the *Rooker-Feldman* rule is jurisdictional, it may be addressed for the first time on appeal and may be raised sua sponte. *See Doctor's Associates, Inc. v. Distajo*, 107 F.3d 126, 137 (2d Cir. 1997). We review questions of subject matter jurisdiction de novo. See *Charchenko v. City of Stillwater*, 47 F.3d 981, 982-83 (8th Cir. 1995).

The *Rooker-Feldman* doctrine forecloses not only straightforward appeals but also more indirect attempts by federal plaintiffs to undermine state court decisions. Thus, a corollary to the basic rule against reviewing judgments prohibits federal district courts from exercising jurisdiction over general constitutional claims that are "inextricably intertwined" with

specific claims already adjudicated in state [493] court. *See Feldman*, 460 U.S. at 482 n. 16; *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1034 (8th Cir. 1999); *Neal v. Wilson*, 112 F.3d 351, 356 (8th Cir. 1997). A general federal claim is inextricably intertwined with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring). In such cases, "where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceedings as, in substance, anything other than a prohibited appeal of the state-court judgment." *Id.* The state and federal claims need not be identical. *See In re Goetzman*, 91 F.3d 1173, 1177 (8th Cir. 1996).

Deciding whether *Rooker-Feldman* controls this case "requires determining exactly what the state court held" to ascertain whether granting the requested federal relief would either void the state court's judgment or effectively amount to a reversal of its holding.[4] *Charchenko*, 47 F.3d at 983; *see Snider v. City of Excelsior Springs*, 154 F.3d 809, 811 (8th Cir. 1998). In addition to raising state law arguments not at issue in this appeal, the state court action sought to invalidate the council's order on the basis of the federal Due Process Clause. The complaint alleged that section 79.495 violates both substantive and procedural due process principles by failing to ensure that all residents of a fourth class city receive adequate notice prior to the circulation of a disincorporation petition. Resolving this challenge, the state court held:

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[4] Because the federal suit was filed prior to the decision of the Missouri Court of Appeals, we focus on the opinion of the Missouri Circuit Court for St. Louis County.

> Because [plaintiffs] have no "life, liberty or property" interest in the continued existence of Peerless Park, . . . there is no constitutional right to notice or a hearing. State law provides, and [plaintiffs] received, more process than [plaintiffs] were due. There is no constitutional right to vote on disincorporation of a fourth class city.

State ex rel. City of Peerless Park, Mo. v. Young, No. 98CC 1146 at 4-5 (St. Louis County, Mo., Cir. Ct., June 15, 1998) (unpublished) (citation omitted), reprinted at App. 414, 419-20. Accordingly, the state court declined to reverse the council's disincorporation order.

Turning to the federal complaint, we begin by noting that the relief sought — to enjoin the disincorporation of Peerless Park — would, as a practical matter, directly nullify the final judgment of the state district court upholding disincorporation. This fact alone may be sufficient to decide the case. *See* Suzanna Sherry, Judicial Federalism in the Trenches: *Rooker-Feldman* Doctrine in Action, 74 Notre Dame L. Rev. 1085, 1099 (1999) (suggesting that *Rooker-Feldman* applies wherever the federal court "is in effect reviewing the state court *judgment* even if it is not reviewing the decision") (emphasis in original); *cf.* Fed. R. Civ. P. 58 (distinguishing between judgments and opinions); Fed. R. App. P. 36 (same).

We also find, however, that even if appellants were not asking us effectively to overturn the state court's judgment, the federal claims they state so closely implicate the decision of the state court that the federal suit would be barred anyway. *See Feldman*, 460 U.S. at 482 n. 16. In reaching this conclusion, we address two issues that complicate the inquiry.

First, since *Rooker-Feldman* deprives federal courts of jurisdiction over general claims not raised before the state court only where such claims are inextricably intertwined with the

state court judgment, "a claim — particularly a claim under federal law — is not precluded if it is 'separable from and collateral to the merits of the state-court judgment.'" *Fielder*, 188 [494] F.3d at 1034 (quoting *Pennzoil*, 481 U.S. 1 at 21 (Brennan, J., concurring)). Thus, it is sometimes permissible for a plaintiff to challenge the constitutionality of a state rule in federal court even though a state court has previously upheld a particular application of the rule to that same plaintiff, so long as the general federal challenge does not involve review of the state court decision. *See Feldman*, 460 U.S. at 482-86.

On its face, appellants' federal complaint in this case may initially appear to articulate legal claims that are "separable from and collateral to" those raised before the state court. Indeed, whereas the state court faced a due process challenge, the 36-page federal complaint studiously avoids any mention of "due process." Instead, appellants creatively invoke the First Amendment, alleging that the secrecy of the petition process effectively "silenced" them, suppressing "core political speech" by preventing them from "conveying a political message against the disincorporation of the City." In addition, because qualified but unregistered voters were not counted toward the total number of city residents for purposes of determining whether the requisite signatures of two thirds of the population had been recorded, appellants rely on the Equal Protection Clause to argue that the secret petition process denied them an "equal opportunity to win votes."

Ultimately, we believe that these arguments do no more than restate the claim for relief that was rejected on the merits by the state court. Although technically the suits invoke distinct constitutional provisions, as a substantive matter they both challenge the basic fairness of the petition process based on the concept of lack of notice. Thus, the first amendment and equal protection arguments presented to the district court appear to be nothing more than creative attempts to reclothe the failed due process claim in new constitutional garb. As such, these

arguments present us with a situation in which a decision favorable to appellants could "only be predicated upon a conviction that the state court was wrong." *Pennzoil*, 481 U.S. at 25 (Marshall, J., concurring). Without commenting on the merits of appellants' arguments, we simply reiterate that federal plaintiffs cannot by artful pleading obtain a hearing of disguised state court appeals that would otherwise be subject to a *Rooker-Feldman* bar. *See Fielder*, 188 F.3d at 1034; *Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992) (party "cannot be allowed to escape *Rooker-Feldman* by raising a new constitutional theory in federal court").

The second complicating factor is that the parties to this suit are not the same as those who litigated in state court. Most importantly, neither appellant was a party to the state court action.[5] Appellants argue that the state court plaintiffs who raised the due process challenge would not have had standing to raise the first amendment and equal protection versions of the same argument because the state court plaintiffs, unlike appellants, were registered voters. Appellants also contend that *Rooker-Feldman* "exists to prevent a party in a state court from having two bites at the apple" and assert that "the *Rooker-Feldman* doctrine has never been applied against nonparties."

This is not quite accurate. We recognize that some courts have held that the *Rooker-Feldman* doctrine does not apply to bar a suit in federal court brought by a party that was not a party in the preceding state court action. *See, e. g., Bennett v. Yoshina*, 140 F.3d 1218, 1223-24 (9th Cir. 1998), *cert. denied sub nom. Citizens for a Constitutional Convention v. Yoshina*, 525 U.S. 1103 (1999); *United States v. Owens*, 54 F.3d 271, 274 (6th Cir. 1995); **[495]** *Valenti*, 962 F.2d at 297-98; *cf.* Wright & Miller, Federal Practice & Procedure § 4469.1 (1999

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[5] In addition, whereas Peerless Park was a plaintiff in the state court suit, in this federal action the disincorporated city has been named as a defendant.

Supp.). Other courts, however, have not hesitated to apply *Rooker-Feldman* against parties who did not participate in the state suit, *see T.W. & M.W. v. Brophy*, 124 F.3d 893, 898 (7th Cir. 1997); *Republic of Paraguay v. Allen*, 949 F. Supp. 1269, 1273 (E. D. Va. 1996), *aff'd on other grounds*, 134 F.3d 622, 628 (4th Cir. 1997); *Williams v. Adkinson*, 792 F. Supp. 755, 761-63 (M. D. Ala. 1992), *aff'd*, 987 F.2d 774 (11th Cir. 1993) (unpublished table decision), and more than one federal appellate judge has expressed the view that the applicability of *Rooker-Feldman* should not depend on identity of the parties in the state and federal suits, *see Bates v. Jones*, 131 F.3d 843, 855-57 (9th Cir. 1997) (en banc) (Rymer, J., concurring); *Roe v. Alabama*, 43 F.3d 574, 586 (11th Cir. 1995) (Edmondson, J., dissenting).

We are persuaded by the latter approach. Insisting that the parties must be identical, it seems to us, confuses the *Rooker-Feldman* doctrine with principles of res judicata. These doctrines are not the same. *See Hachamovitch v. DeBuono*, 159 F.3d 687, 696 n.2 (2d. Cir. 1998) (noting that the "*Rooker-Feldman* doctrine differs from preclusion in certain critical ways"); *Charchenko*, 47 F.3d at 984-85 (conducting separate analyses and finding claims barred by *Rooker-Feldman* but not res judicata). Although the two rules often overlap in their practical effects, they rest on contrasting foundations and serve distinct purposes. Thus, whereas res judicata is largely a matter of common law and involves the impropriety of permitting parties to have "two bites at the apple," *Rooker-Feldman* is based squarely on federal law and is concerned with federalism and the proper delineation of the power of the lower federal courts. Such courts are simply without authority to review most state court judgments — regardless of who might request them to do so. *See Rooker*, 263 U.S. at 416; Sherry, *supra*, at 1112-23. Accordingly, that appellants were not parties to the

state suit is not by itself dispositive.[6]

That said, however, considering the situation of the parties will often be helpful in the "inextricably intertwined" analysis. The key inquiry, as always, must be whether the federal plaintiff's interest in having a state rule set aside is inseparable from his interest in upsetting a particular state court judgment based on that rule. *See Feldman*, 460 U.S. at 482-86. This may be the case where the federal plaintiff would have lacked standing to bring the general challenge but for the state court's judgment, see *Facio v. Jones*, 929 F.2d 541, 545 (10th Cir. 1991), or where the relief sought in federal court both implicates a state court decision and has merely retrospective as opposed to prospective effect, *compare Centifanti v. Nix*, 865 F.2d 1422, 1430 (3d Cir. 1989) (disbarred attorney's prospective challenge to reinstatement rules not precluded by *Rooker-Feldman* doctrine) with *Stern v. Nix*, 840 F.2d 208, 212 (3d Cir. 1988) (disbarred attorney's retrospective challenge to disbarment procedures precluded by *Rooker-Feldman* doctrine).

Conversely, although the fact that appellants were not parties to the state suit does not automatically preclude a *Rooker-Feldman* bar, we recognize that some **[496]** courts have declined to apply the rule where the federal plaintiffs lacked a reasonable opportunity, through intervention or otherwise, to litigate their claims in state court. *See, e. g., Long*

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[6] We recognize that, in *Snider*, 154 F.3d at 812, we felt it necessary to distinguish *Johnson v. De Grandy*, in which the Supreme Court stated that the United States's absence from a prior state court action supported the conclusion that the *Rooker-Feldman* doctrine did not prevent the United States from bringing a subsequent federal suit. *See* 512 U.S. 997, 1005-06 (1994). The absence of the United States from the state court proceedings was not critical to the outcome in *De Grandy*, however, since the Court additionally found, first, that the state court considered its own decision to have been a mere "preliminary look" at the relevant claims and, second, that the United States "had not directly attacked [the state court] judgment in this proceeding." *Id.*

v. Shorebank Dev. Corp., 182 F.3d 548, 558 (7th Cir. 1999); *Valenti*, 962 F.2d at 296; *Wood v. Orange County*, 715 F.2d 1543, 1546-48 (11th Cir. 1983) (stating that when "plaintiffs did not have a reasonable opportunity to raise their claims in the state trial court where judgment was entered or on appeal of that judgment, the [federal] district court will not usurp the role of state appellate courts or the Supreme Court by accepting jurisdiction").[7]

In the present case, application of these principles reinforces our conclusion that *Rooker-Feldman* bars the federal claims. Appellants' general constitutional challenge to section 79.495 is inseparable from their desire to reverse the disincorporation of Peerless Park. Indeed, the only possible basis for federal standing in this case arises from the council's disincorporation decision, which was sustained by the state court in a judgment appellants now specifically ask us to overturn. Moreover, because the entire upshot of a favorable decision in this case would be to unwind the decision of the state court, granting the requested relief would have only retrospective effect. Appellants' federal claims are thus inextricably intertwined with the state court judgment. *See Feldman*, 470 U.S. at 482 n.16.

Furthermore, there can be little doubt that both appellants had ample opportunity to bring their first amendment and equal protection claims in state court. Both Lemonds and Halbman were city officials of Peerless Park up until its dissolution (Lemonds was an alderman and Halbman was building commissioner), and they were well aware of the state proceedings. Indeed, Lemonds himself sponsored the bill to hire an attorney for the city in the state court litigation and

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[7] We note that this is not the same as creating a blanket exception for procedural due process claims, a step we have expressly declined to take in the past. *See Goetzman*, 91 F.3d at 1178; *Postma v. First Fed. Sav. & Loan of Sioux City*, 74 F.3d 160, 162 n. 3 (8th Cir. 1996).

received regular reports on the progress of the case. Yet, rather than pursuing their claims before the state court, appellants awaited that court's adverse ruling before attempting to bring their substantively identical challenges in federal district court. This the *Rooker-Feldman* doctrine does not allow. *See Long*, 182 F.3d at 558.

Finally, we find no abuse of discretion in the district court's denial of leave to file a third amended complaint, as appellees' motion to dismiss based on the second amended complaint was already fully briefed and under submission, and granting further leave to amend would thus have imposed an undue burden on appellees. *See In re Milk Products Antitrust Litigation*, 195 F.3d 430, 438 (8th Cir. 1999), *cert. denied sub nom. Rainy Lake One Stop, Inc. v. Marigold Foods, Inc.*, 120 S. Ct. 1534 (U. S. Mar. 27, 2000); *Fuller v. Secretary of Defense*, 30 F.3d 86, 89 (8th Cir. 1994) (standard of review).

The judgment is affirmed.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RICH LEMONDS, et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	**FILED**
	)	**OCT 15 1999**
ST. LOUIS COUNTY,	)	
et al.,	)	Case No.
	)	4:99CV00691 ERW
Defendants.	)	

MEMORANDUM AND ORDER

This matter is before the Court upon the Motions to Dismiss plaintiffs' Second Amended Complaint filed by defendants and intervening defendants. [Documents #87 and #93]. Plaintiffs claim in this action that the defendants, actions in regards to the disincorporation of the city of Peerless Park deprived them of due process, violated their equal protection rights, and violated their rights under the First Amendment. Defendants and intervening defendants claim that plaintiffs' complaint fails to state a cause of action for which relief can be granted for the following reasons: (1) the complaint is barred by the doctrines of res judicata and collateral estoppel, because plaintiffs' complaint represents a collateral attack on a full and final judgment in an action brought in the Missouri court system and affirmed by the Missouri Court of Appeals; (2) this Court lacks jurisdiction over this cause of action, because this Court may not reverse the final judgment reached in the state court system under the principles set forth by the Supreme Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); (3) the plaintiffs' second amended complaint fails to state a cause of action for which relief can be granted; and (4) plaintiffs lack standing to assert the claims in their second amended complaint. Considering all these arguments under the facts of this case, the Court concludes that the Motions to Dismiss should be granted.

I. STATEMENT OF GENERAL AND RELEVANT FACTS.

Plaintiffs Rich Halbman and Rich Lemonds were residents of the city of Peerless Park. On or about December 11, 1997, eighteen registered voters of what was at that time the city of Peerless Park signed a petition to disincorporate Peerless Park. On March 19, 1998, the St. Louis County Council issued an Order to disincorporate Peerless Park pursuant to Mo. Rev. Stat. § 79.495, which provides as follows:

> **"Disincorporation without election allowed, when** — The county governing body of any county in which a city of the fourth class is located shall have the power to disincorporate such city upon petition of two-thirds of the voters of such city, without an election in such city, provided that the petition requests disincorporation without an election, and provided that the population of such city is less than one hundred."

Any resident who is registered to vote, but does not sign the petition for disincorporation, is considered to be against the disincorporation.

Plaintiffs claim that Susan McCole and Mary Corbett, alderpersons of Peerless Park, circulated the petition to at least some of the residents of Peerless Park, but failed to present the petition to all of the Peerless Park residents. Plaintiffs claim that they presented the petition to the residents of only six of

the ten homes in Peerless Park. Plaintiffs also claim that McCole and Corbett did not notify opponents of the petition or provide a voting registration cutoff date. Plaintiffs claim that these actions prevented opponents of the petition from registering and voting against, or being counted as votes against, the petition to disincorporate Peerless Park. Plaintiffs claim that they would have voted against the petition if they had been registered voters, but the actions taken by the individuals circulating the petition prevented them from registering and voting against disincorporation. Plaintiffs claim their votes would have prevented the disincorporation of the City.

Prior to entering the Order disincorporating Peerless Park, the St. Louis County Council referred the petition to Hon. John E. Bardgett, Jr. for a recommendation and report. Following an evidentiary hearing held on January 29, 1998, Bardgett found that the petition satisfied section 79.495. He submitted this report to the County Council on or about March 3, 1998. The Council based its March 19, 1998 Order to disincorporate Peerless Park on Bardgett's report.

Following the Council's Order, Peerless Park, through its mayor and two of its aldermen, filed a lawsuit in the Circuit Court of the state of Missouri contesting this action, arguing that the disincorporation was a "boundary change," reviewable by the Boundary Commission, which would allow for an open public election. The members of the County Council were named as Respondents in this action and the eighteen intervening defendants in this matter intervened there as well. The court upheld the jurisdiction of St. Louis County and disincorporated the City. The Missouri Court of Appeals upheld that decision on April 13, 1999. Its mandate issued May 5, 1999. Peerless Park has now been disincorporated and is a part of St. Louis County.

II. STANDARDS GOVERNING MOTIONS TO DISMISS

A complaint shall not be dismissed for its failure to state a claim upon which relief can be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of a claim entitling him or her to relief. *Breedlove v. Earthgrains Baking*, 140 F.3d 797, 799 (8th Cir. 1998) (citing, inter alia, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In addition, this Court must view the facts alleged in the light most favorable to the plaintiff. *Schuer v. Rhode*, 416 U.S. 232, 236 (1976). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to present evidence in support of his or her claim. *Id.* Analyzing plaintiffs' claims under these standards, the Court concludes that plaintiffs' complaint fails to state a cause of action for which relief can be granted for the reasons that follow.

III. PLAINTIFFS' EQUAL PROTECTION CLAIM FAILS AS A MATTER OF LAW

First, the Court finds that plaintiffs' Equal Protection claim fails as a matter of law, because a rational relationship exists between the requirement that only registered voters, as opposed to unregistered voters, are counted in determining whether a city should be disincorporated and the Governmental interest in efficiency and prevention of fraud. Courts have made clear that "'[R]estrictions affecting the right to vote must cause a discrimination of some substance before the compelling state interest test is triggered.'" *Coalition for Sensible and Humane Solutions v. Wamser*, 590 F. Supp. 217, 222 (E.D. Mo. 1984) (quoting *United States v. State of South Dakota*, 636 F.2d 241, 244 (8th Cir. 1990)). As defendant St. Louis County notes, plaintiffs have not been deprived of the right to vote in this case, because section 79.495 allows for disincorporation without an election. As the Supreme Court has noted, states have "'broad powers to determine the conditions under which

the right to suffrage may be exercised.'" *Evans v. Cornman*, 398 U.S. 419, 422 (1970) (quoting *Lassiter v. Northhampton Election Board*, 360 U.S. 45, 50 (1959)). The Equal Protection Clause comes into play "'*once* the franchise is granted to the electorate.'" *Id.* (citing *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966)) (emphasis added). Under section 79.495, no election is required if two-thirds of the voters of a city petition for disincorporation. Thus, the state did not grant the franchise to the electorate in this case. Therefore, because this case does not involve an election or voting rights, the Court does not find that the "compelling interest" test applies to this case.

Moreover, plaintiffs have not established that any alleged voting restriction in this case causes discrimination of "some substance." Plaintiffs appear to argue that the procedure utilized by those supporting the disincorporation of Peerless Park discriminated against those opposing such disincorporation. In reality, however, the only residents not counted in the determination of whether to disincorporate Peerless Park were those residents who were not registered to vote. The Court does not find any case law supporting the view that a restriction limiting the right to be counted in a petition to disincorporate solely to registered voters causes a discrimination of "some substance." *Murrah v. State of Arkansas*, 532 F.2d 105, 106 (8th Cir. 1976) (noting and citing several cases for the proposition that it "has been uniformly held that persons not registered to vote do not constitute a distinct and identifiable group such that there has been an intentional, systematic exclusion of a distinct class"); *cf. Morgan v. City of Florissant*, 147 F.3d 772, 773-74 (8th Cir. 1998) (noting difference in voting jurisprudence between election laws providing for the drawing and redrawing of state political subdivisions, which is reviewed under a rational relationship test, and laws involving the choice of legislative representatives or imposing restrictions on voters based on characteristics such as wealth or race, which is reviewed under the strict scrutiny test); *Taxpayers United*

For Assessment Cuts v. Austin, 994 F.2d 291, 296 (6th Cir. 1993) (noting that while it is well settled that the right to vote is a fundamental right, research does not "identify any decision of the Supreme Court or a lower federal court holding that signing a petition to initiate legislation is entitled to the same protection as exercising the right to vote").

This absence of such case law is not surprising, because if such a "voting" restriction did amount to discrimination of "some substance," the Court believes that every election would be open to challenge from unregistered voters who are dissatisfied with the result. Plaintiffs have not demonstrated that the voting restriction at issue here causes discrimination of "some substance." The right to vote in any election or other procedure is only a "'right to participate in elections on an equal basis with other citizens in the jurisdiction. *St. Louis County, Mo. v. City of Town and Country*, 590 F. Supp. 731, 737 (E.D. Mo. 1984). All unregistered voters, including plaintiffs and any unregistered individuals who would have favored disincorporation, were excluded from the calculation of whether Peerless Park should be disincorporated. Thus, no form of discrimination requiring strict scrutiny is present under the facts of this case. Therefore, the rational basis test applies. Because a rational basis exists between the consideration of only registered voters and the Governmental interest in efficiency and prevention of fraud, plaintiffs' equal protection claim fails as a matter of law.

IV. PLAINTIFFS' DUE PROCESS CLAIM FAILS AS A MATTER OF LAW.

For the same reasons set forth *supra* in Section III, the Court concludes that plaintiffs, due process claim fails as a matter of law. In addition, plaintiffs, due process claim fails as a matter of law, because plaintiffs have not demonstrated that Missouri law has created an interest sufficient to constitute a "legitimate claim of entitlement" subject to protection under

the due process clause under the facts of this case. See *Dobrovolny v., Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997) (noting that right to state initiative process is a "right created by state law," which means that if certain procedures for exercising such a right are not provided under the state law creating the right, the parties arguing that a denial of such procedures deprives them of due process "have no right or interest which would entitle them to due process protection"). For these reasons, plaintiffs' due process claim fails as a matter of law.

V. PLAINTIFFS' FIRST AMENDMENT CLAIM FAILS AS A MATTER OF LAW.

Plaintiffs have based their First Amendment claim on the Supreme Court's recent decision in *Buckley v. American Constitutional Law Foundation*, 119 S. Ct, 636 (1999). Plaintiffs argued that their First Amendment rights were violated under the principles set forth in cases like *Buckley*, because the individuals circulating the petition to disincorporate Peerless Park secretly circulated the petition only to those individuals who, like the circulators, were in favor of disincorporation.

Under the facts of this case, however, it is clear that plaintiffs' First Amendment rights have not been impinged by any governmental action in this matter. As the Court noted *supra* in Section III, the consideration of the signatures of only those individuals who are registered to vote is reasonably related to the goals of efficiency and fairness in determining whether a fourth-class city should or should not be disincorporated. The principles set forth in *Buckley* do not lead the Court to a contrary finding and plaintiffs have not directed the Court to any other law supporting their claims. *Buckley* involved Colorado statutes placing restrictions on petition circulators. In the present case, however, no restrictions were placed on any petition circulators by any Missouri law.

Plaintiffs have not directed the Court to any governmental action in this case that limited their First Amendment rights. Plaintiffs could have distributed their own petitions or other anti-disincorporation propaganda to opponents or proponents of the disincorporation of Peerless Park, regardless of their status as unregistered voters. Therefore, *Buckley* and *Meyer v. Grant*, 486 U.S. 414 (1988), another case discussing state restrictions on petition circulators, do not apply to the facts of this case.

While plaintiffs argue that the petition was only circulated to individuals who wished to disincorporate Peerless Park, which prevented unregistered opponents of the disincorporation from registering and being counted against disincorporation, such selective circulation of a petition is acceptable under the First Amendment. In fact, in arguing against such selective circulation, it is plaintiffs, not defendants, who argue in favor of a restriction on the First Amendment rights of petition circulators. A requirement that all petition circulators present the petition to their opponents would inhibit the freedom of the circulators to engage in one-on-one association with those who share their same goals and ideals. In addition, the additional time and resources required to present petitions to all potential opponents of disincorporation would limit the number of individuals capable of circulating petitions in the manner desired by plaintiff. Therefore, such a restriction would, like the restrictions at issue in *Buckley* and *Meyer*, reduce the number of voices who could convey the messages of the proponents and opponents of disincorporation. For these reasons, the Court finds that plaintiffs' First Amendment claims fail as a matter of law and should be dismissed.

VI. CONCLUSION.

For the reasons set forth in this Memorandum and Order, the Court finds that plaintiffs' claims fail as a matter of law and shall be dismissed.[1]

Accordingly,

IT is HEREBY ORDERED that the Motions to Dismiss filed by both defendant and the intervenor defendants [Documents #87 and #93] are GRANTED; and

IT IS FURTHER ORDERED that all other pending motions are DENIED as moot.

An appropriate judgment shall accompany this memorandum and order.

Dated this 15th day of October, 1999.

E. Richard Webber
United States District Judge

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[1] Because the Court has concluded that plaintiffs' claims fail as a matter of law for the reasons set forth in this memorandum and order, no further discussion of defendants' other claims supporting dismissal is indicated. However, the Court believes that if plaintiffs' claims did not fail as a matter of law for the reasons set forth *supra*., this Court would lack jurisdiction over plaintiffs' claims under the principles set forth by the Supreme Court in *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), because granting the relief requested by plaintiffs would require this Court to "effectively reverse the state court decision" and "void its holding." *Snider v. City of Excelsior Springs, Missouri*, 154 F.3d 809, 811 (8th Cir. 1998). In the proceedings that took place in the Missouri court system, the Missouri courts upheld the disincorporation of Peerless Park, noted that there was "no constitutional right to vote on disincorporation of a fourth class city," and even found that plaintiff Rich Lemonds was "not a voter" under Missouri law. The Court believes that granting plaintiffs the relief they seek would reverse these decisions made by the Missouri state courts. The Court believes the *Rooker-Feldman* doctrine cautions the Court against granting such relief.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RICH LEMONDS, et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	**FILED**
	)	**OCT 15 1999**
ST. LOUIS COUNTY,	)	
et al.,	)	Case No.
	)	4:99CV00691 ERW
Defendants.	)	

JUDGMENT

In accordance with the Memorandum and Order of this Court, which was filed on this date and incorporated herein,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that all of plaintiffs' claims against defendants are dismissed with prejudice.

Dated this 15th day of October, 1999.

/s/
E. Richard Webber
United States District Judge

APPENDIX C

IN THE CIRCUIT COURT
OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STATE ex rel. CITY OF PEERLESS PARK, MISSOURI, et al.,	)	
Relators,	)	
vs.	)	Cause No. 98CC 1146
ROBERT D. YOUNG, et al.,	)	Division No. 39
Respondents.	)	

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Findings of Fact

1. All of the records and proceedings of the St. Louis County Council ("County Council") In the Matter of Disincorporation of the City of Peerless Park, as fully and entirely as they remain among the records, papers and files of said County Council, have been filed with this court by Respondents in obedience to the Writ of Certiorari.

2. The City of Peerless Park is a fourth class city located in St. Louis County, Missouri.

A. On June 11, 1990 the Board of Trustees of the Village of Peerless Park duly enacted Ordinance 9-1990 providing for the holding of an election to be held in the Village of Peerless Park at the time of the holding of the primary election on

August 7, 1990 for the purpose of submitting to the qualified electors of said village a proposal to change the classification of the village of Peerless Park from that of a village to that of a fourth class city.

B. A Special Election was held on August 7, 1990 in which a majority of the voters of the Village of Peerless Park voted in favor of the proposition to become a fourth class city.

C. Relators admitted in the Petition for Writ of Certiorari filed with this court on April 7, 1998 that Peerless Park is a fourth class city.

D. At the proceedings before County Council, Peerless Park admitted that it was a fourth class city.

3. Respondent St. Louis County is a charter county of the first class and the individual respondents are councilmen of St. Louis County, acting in their representative capacity. Intervenors are residents and qualified voters of Peerless Park who signed the Petition to Disincorporate Peerless Park.

4. On the 19th day of March, 1998 the County Council adopted an order disincorporating the City of Peerless Park, pursuant to Section 79.495 R.S.Mo. effective May 1, 1998, and provided the Council shall appoint a trustee, pursuant to Section 79.510 R.S.Mo. prior to May 1, 1998. A copy of the order is attached to the Petition as Plaintiff s Exhibit 1.

5. The City of Peerless Park has, and at all relevant times herein has had, a population of less than 100.

6. On December 10, 1997, Intervenors Mary Corbett and Susan McCole prepared a Petition for Disincorporation of Peerless Park.

7. On December 10, 1997, the Petition that had been prepared by Corbett and McCole was signed by them and sixteen other persons.

8. On December 10, 1997, McCole witnessed each and every person executing the Petition.

9. All eighteen persons who signed the petition on December 10, 1997, did so voluntarily and in the presence of McCole, and knew that they were asking the County Council to disincorporate the City of Peerless Park without an election.

10. All eighteen persons who signed the petition on December 10, 1997 resided in Peerless Park at the addresses listed on the Petition and were registered voters of Peerless Park.

11. On the morning of December 11, 1997, Susan McCole went to the St. Louis County Board of Election Commissioners, where she executed an affidavit attesting that she witnessed and collected the signatures, and had the affidavit notarized.

12. On December 11, 1997, Susan McCole and others filed the Petition (with eighteen signatures) with the St. Louis County Council.

13. The Petition was signed by two-thirds of the legal voters of the City of Peerless Park.

A. On December 11, 1997, there were 30 persons shown on the Board of Election Commissioners list of "Active Registered Voters";

B. Three of the thirty persons shown on the Board of Election Commissioners list did not reside in the City of Peerless Park on December 11, 1997, or any time thereafter: Paula C. Benz, Kenneth J. Otzenberger, and Bernard J. Otzenberger;

C. On December 11, 1997, there were 7 persons shown on the Board of Election Commissioners list of "Inactive Prior Registrants." Those inactive prior registrants were not residents of Peerless Park on December 11, 1997 and thus did not have

a right to vote in Peerless Park on December 1, 1997;

D. Richard Lemmonds was not registered as a voter of Peerless Park on December 11, 1997 and thus did not have a right to vote in Peerless Park on December 11, 1997.

E. On December 11, 1997, there were 27 legal voters of the City of Peerless Park (i.e., 30 less three).

F. The Petition was signed by eighteen registered voters and residents of Peerless Park, all of whom had a right to vote in Peerless Park on December 11, 1997.

14. Eighteen of twenty-seven voters constitute two-thirds of the voters of Peerless Park as of December 11, 1997.

15. The disincorporation of Peerless Park would result in a transfer of jurisdiction between what is now the City of Peerless Park, a municipality, and St. Louis County, but would not result in a municipality.

16. County Council provided Relators with actual notice of the Petition to Disincorporate and allowed Relators to fully participate in the proceedings before it.

Conclusions of Law

1. The disincorporation of Peerless Park is not a "boundary change" as that term is used in Section 72.400(1) R.S.Mo. Therefore, the Boundary Commission Law, sections 72.400 *et seq.* R.S.Mo. does not apply.

2. County Council has jurisdiction to disincorporate Peerless Park pursuant to Section 79.495 R.S.Mo. The power of the legislature to disincorporate cities is practically unlimited. *In re the City of Kinloch*, 242 S.W. 2d 59 (Mo. 195 1) The County Council has been given authority by Section 79.495 R.S.Mo. to act as the legislative agent to abolish fourth class cities with a population less than 100 upon petition of

two-thirds of the voters of such city, without an election. *Id.*

3. Because relators have no "life, liberty or property" interest in the continued existence of Peerless Park, *Hunter v. City of Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40 (1907), there is no constitutional right to notice or a hearing. State law provides, and Relators received, more process than Relators were due. There is no constitutional right to vote on disincorporation of a fourth class city.

4. Peerless Park is a fourth class city. The Special Election of August 7, 1990 complied with the notice requirements of Chapter 115 R.S.Mo. and was thus valid. Chapter 115 governs all public elections in the state, except elections for which ownership of real property is required for voting. The requirement of Section 72.070 R.S.Mo. that the election to become a fourth class city be held not more than 30 days after the Ordinance for holding the election is passed is in direct conflict with Section 115.125 R.S.Mo. Statutes are to be construed together and harmonized if possible. *O'Flaherty v. State Tax Commission of Missouri*, 680 S.W.2D 2d 153, 155 (Mo. Banc 1984). However, when one statute deals with a subject in a particular way, and a second statute deals with the same subject in a more detailed way, the more general yields to the more specific. Id. at 154. The legislature, through the "Comprehensive Election Act of 1977," ("Chapter 115") sought to "simplify, clarify and harmonize the laws governing elections." Section 115.003 R.S.Mo. Chapter 115 is the more specific of the two statutes and governs when all elections, including an election to become a fourth class city, may be held.

Finally, even if the notice for the election had been legally defective, the election result cannot be collaterally attacked eight years later. Defective notice of an election can only be litigated by an election contest brought within the time allowed by Chapter 115 R.S.Mo. "The wording of a proposition on a

ballot and **the propriety of the notice of election provided** are issues cognizable only in an election contest." (Emphasis added.) *Beatty v. Metropolitan St. Louis Sewer Dist.*, 700 S.W.2d 831, 838 (Mo. Banc 1985), followed in *State v. County Com'n of Johnson County*, 918 SW.2d 252, 255 (Mo. Banc 1996) and *McCollum v. Director of Revenue*, 906 SW.2d 368, 369 (Mo. Banc 1995).

5. The Petition to Disincorporate was signed by two-thirds of the legal voters of Peerless Park. A "voter" is defined by Missouri law as "registered voter, or legal voter." Section 1.035 R.S.Mo. A person who is otherwise qualified but not registered is not a voter, *State ex rel. Socialist Workers' Party of Missouri v. Kirkpatrick*, 513 S.W.2d 346 (Mo. 1974). A person who is registered but not eligible is not a voter, Art. VIII, §2, Mo. Const., § 115.135 R.S.Mo., *Marre v. Reed*, 775 SW.2d 951 (Mo. banc 1989). A person who is not a "resident" of a city is not a legal voter in the city. *Id.*

John Asberry's signature on the Petition to Disincorporate is valid. The sworn testimony at the proceedings before County Council, which was uncontroverted, establishes that on December 10, 1997 (the date he signed the Petition to Disincorporate), John Asberry resided at 2 Thornhedge Drive in Peerless Park, the address he listed on the Petition. The Affidavit of Richard Ward does not raise an issue of material fact as to where John Asberry resided on December 10. At most, the Affidavit raises an issue as to where John Asberry resided in November 1997, which is not a material fact. On the date John Asberry signed the Petition, his residence was the address he listed on the Petition and he was a legal voter of the City of Peerless Park.

Richard Lemmonds is not a legal voter because he was not registered to vote in Peerless Park on December 11, 1997. A person who is otherwise qualified but not registered is not a voter. *Scott v. Kirkpatrick*, 513 S.W.2d 442 (Mo.banc 1974). A person who does not register to vote by close of business on the

fourth Wednesday prior to an election is not entitled to vote in that election. Section 115.135 R.S.Mo. The essence of *Scott* is that a person must be legally entitled to vote on the measure proposed by a petition on the day that he signs it. Persons who fail to register to vote before a petition is circulated are not legal voters.

Kenneth Otzenberger is not a legal voter because he was not a resident of Peerless Park on December 11, 1997. His affidavit, which asks the County Board of Election Commissioners to remove him from the rolls and recites that he doesn't live in Peerless Park and hasn't for more than six months and doesn't intend to in the future, is sufficient to establish that he abandoned his residence in Peerless Park with the intent of establishing a new residence elsewhere before December 11, 1997.

6. The form of the Petition to Disincorporate complies with the requirements of Section 79.495 R.S.Mo. The provisions of Sections 115.019 and 115.700 R.S.Mo. do not apply to petitions to disincorporate a fourth class city without an election. By their terms, the above sections apply to petitions for "local issues" as discussed elsewhere in Chapter 115, i.e. elections. Even if the above sections apply, the failure to include a column for "date signed" is merely a technical error which does not effect the sufficiency of the Petition.

7. County Council had authority under Section 79.495 R.S.Mo. to determine the number of "voters of such city." The list of registered voters from the Board of Election Commissioners was evidence on this subject, but not conclusive or unimpeachable as against the substantial evidence showing that some persons on the voter rolls were not, in fact, residents of the city and thus not voters "of the city." *Kinloch, supra*, at 65.

Because the determined facts meet with the requirements of Section 79.495 R.S.Mo. the statute is mandatory in effectuating the legislative will. Id. Therefore, the Order of County Council disincorporating Peerless Park is hereby affirmed.

SO ORDERED:

/s/ Patrick Clifford, Judge

6/15/98

IN THE CIRCUIT COURT
OF THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

STATE ex rel. CITY OF PEERLESS PARK, MISSOURI, et al.,	)	
Relators,	)	
vs.	)	Cause No. 98CC 1146
ROBERT D. YOUNG, et al.,	)	Division No. 39
Respondents.	)	

JUDGMENT

In this action, relators seek a Writ of Certiorari and a judgment reversing the order of the St. Louis County Council ("County Council") disincorporating the City of Peerless Park. This matter is before the Court on Intervenors' Motion for Summary Judgment and Respondents' Motion for Summary Judgment. The Court has heard argument of counsel and has reviewed the motions, responses and memoranda of law submitted by the parties.

The court finds that Intervenors' Motion for Summary Judgment and Respondents' Motion for Summary Judgment and Relators' Responses thereto show that there is no genuine issue as to any material fact and that Intervenors and Respondents are entitled to judgment as a matter of law.

Pursuant to the Findings of Fact and Conclusions of Law filed herewith, the Court hereby enters judgment in favor of Intervenors and Respondents and against Relators. Costs taxed against Relators.

SO ORDERED:

/s/ Patrick Clifford, Judge

6/15/98

APPENDIX D

COURT OF APPEALS OF MISSOURI
EASTERN DISTRICT, DIVISION TWO

April 13, 1999, Filed
98 S.W.2d 142

STATE OF MISSOURI EX REL. CITY OF PEERLESS PARK, et al.,	)	
Realtors/Appellants,	)	
v.	)	No. ED74704
ROBERT D. YOUNG, et al.,	)	
Respondents,	)	
and	)	
DONNA ASBERRY, et al.,	)	
Intervenors.	)	

Before: James R. Dowd, P.J., Lawrence G. Crahan, J., & Richard B. Teitelman, J.

OPINION

ORDER PER CURIAM.

The City of Peerless Park, the city's mayor, and two of its aldermen (collectively, "Appellants") appeal from the summary judgment entered by the Circuit Court of St. Louis County affirming the action of the St. Louis County Council disincorporating the City of Peerless Park pursuant to Section 79.495, RSMo 1994. Appellants argue that pursuant to Section 72.400(2), the disincorporation of a city is a boundary change and is subject to the provisions of the Boundary Commission Law and that disincorporation pursuant to Section 79.495 RSMo is therefore erroneous.

We have reviewed the briefs of the parties and the record on appeal and find no error of law. No precedential or jurisprudential purpose would be served by an extended opinion. The judgment is affirmed pursuant to Rule 84.16(b).

APPENDIX E

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-3007EMSL

Rich Lemonds, et al.,	*	
	*	**ORDER**
Appellants,	*	**DENYING**
	*	**PETITION FOR**
v.	*	**REHEARING**
	*	**AND FOR**
St. Louis County, et al.,	*	**REHEARING**
	*	**EN BANC**
Appellees.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)

September 18, 2000

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit